CIVIL WRIT JURISDICTION No.2406 of 1989

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1. DILBASI KUWAR W/O LATE RAJ KESHWAR SINGH
2. URMILA DEVI
3. BALKESHWAR SINGH S/O LATE RAM KRIT SINGH
4. ARUN KUMAR SINGH S/O LATE RAJKESHWAR SINGH
5. SHAILENDRA KUMAR SINGH (MINOR) S/O ARUN KUMAR SINGH, UNDER GUARDIANSHIP OF HIS FATHER
6. GRIJESH KUMAR SINGH
7. ANIL KUMAR SINGH
8. SHASHI KUMAR SINGH ALL S/O BALKESHWAR SINGH, R/O VILLAGE PIPRA PS. KUDRA, DISTRICT- ROHTAS

Versus

1. BIBI JAHANARA W/O MR. M.Z. AWADIN(DECEASED)
2. MD. SHAMIM AWADIN
3. MD WAZIM AWADIN, BOTH S/O LATE M.Z. AWADIN R/O REJENDRA NAGAR, PATNA,DISTT- PATNA (VENDORS) RESPONDENT 1ST PARTY
4. VIJAY NARAYAN SINGH S/O RAM SAKAL SINGH
5. BANARSI SINGH S/O SUBEDAR SINGH, BOTH R/O VIULLAGE FULI P.S. PIPRA PS. KUDRA DISTT- ROHTAS (VENDEES) RESPONDENTS 2ND PARTY
6. PARAS NATH SINGH
7. SHEO PUJAN SINGH
8. RAM PUJAN SINGH, ALL S/O HARBANS SINGH, R/O VILLAGE PIPRA PS. KUDRA DISTT- ROHTAS (TRANSFEREES) RESPONDENTS 3RD PARTY
9. STATE OF BIHAR
10. ADDITIONAL MEMBER BOARD OF REVENUE, OLD SECRETARIAT, PATNA
11. ADDITIONAL COLLECTOR, ROHTAS
12. DEPUTY COLLECTOR LAND REFORMS, BHABHUA- RESPONDENTS 4TH PARTY.

For the petitioners. Mr. Shashi Shekhar Dvivedi, Sr, Advocate, M/s R.S. Dvivedi R.K. Dubey & K.D. Pratap, Advocates

For the State: Mr. Dhananjay Kumar JC to GP-12.

P R E S E N T

HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A.K.Tripathi,J The short question which has been raised by Senior counsel appearing for the petitioners is whether the Additional Member Board of Revenue as well as the appellate authority committed an error of law by relying on a decision rendered in the case of Md. Zainul Abdin vrs. The Additional member Board of Revenue reported in AIR 1985 Pat. 280 in the

given facts of the present case when the law on this issue has already been laid down in the case of R.P. Singh vrs. The State of Bihar & Ors reported in AIR 1974 Pat. 24.

A few facts are laid out. The claim of the petitioners for pre- emption with regard to three sale-deeds executed by one Bibi Jaha Ara with regard to 6. 87 acres of land was asserted by the petitioners by filing an application under section 16(3) of the Act. Since the sale-deeds were by three different instruments dated 1.3.1982 and all of them came to be registered on the same date i.e. on 19.3.1983, therefore the petitioners in their wisdom filed a single application but deposited the consideration money along with 10% as required under the law for the total area of 6. 87 acres. The claim of the petitioners that they are adjoining raiyat was found to be in the order by the original court and their application was allowed. But on appeal by the respondents the appellate court as well the Member Board of Revenue while exercising revisional power took a view that since three different applications had not been filed with regard to three deeds therefore the order passed in favour of the petitioners requires interference. Petitioners lost both before the appellate authority as well the revisional authority basically on this question. The basic finding was not under dispute as pointed out by learned senior counsel appearing on behalf of the petitioners in this regard.

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Submission has been made on behalf of the petitioners that as far back as in the year 1974 in the case of **R.P.**

Singh vrs. The State of Bihar & ors (Supra) a Division Bench of this Court has laid down the ratio at page 27 in paragraph 3 of the judgment as under:-

"If two sale deeds are executed by the same person in favour of different persons, then the pre-emptor may not, rather should not be permitted to file one application against the different sets of purchasers. There, on general principles, one purchaser should not be made a party in the case of the other purchaser and it should be insisted that two applications should be filed. It may well also be that if sale deeds are executed on different dates by same vendor in favour of the same vendee, then also filing of different applications may be advisable or necessary. But the facts of the present case are too glaring to attract the principle of law decided by the learned Additional Member Board of revenue, that one application was not maintainable. Two sale deeds were executed on the same day by respondent 6 in favour of respondent 5. If the pre-emptors claim to be the adjoining raiyats of all the plots transferred, they could file one application and there was no infirmity, defect or illegality in it."

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In other words the Division Bench was of the view that there is possibility of filing a single application for more than one sale deeds provided the land in question and the parties in question were the same. In the present case it is not disputed nor it has been denied that consideration money against all the three instruments and 10% thereof was deposited. The consolidated deposit was made in support of the claim but under only one application. Since this was permissible under law therefore they committed no wrong in filing the single application. To that extent the order passed both in appeal as well as in revision is on the face of it illegal.

The Additional Board of Revenue in his order in paragraph-9 held that the finding rendered by the Additional

Collector while exercising power under appeal as well as his opinion that a single application could not be maintained was based on a decision rendered in the case **of Md. Zainul Abdin vrs. The Additional Member Board of Revenue & ors. reported in** AIR 1985 Pat. 280. The Court has examined the decision not only with regard to the ratio but also with regard to the facts of the case. Learned Single Judge in the decision has categorically held that one common application against two sale deeds executed in favour of two different vendees cannot be maintained. But the case of the petitioners is that the three sale deeds executed by the respondents were with regard to same land and vendees and therefore no separate applications were required.

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There seems to be force in the submission which has been made by learned Senior counsel appearing on behalf of the petitioners. The basic facts are not disputed at any point of time. The only reason why the petitioners' claim for pre-emption was rejected by the appellate authority as well as by the revisional authority was that petitioners' did not file separate application under section 16(3) of the Act. This was the only reason the order passed in favour of the petitioners by the first court was set aside both by the appellate authority and upheld by revisional authority.

The Court is of the opinion that the case of the petitioners is covered by the decision of the Division Bench rendered by this Court in the case of Ram Prasad Singh & Ors. vrs. The State of Bihar & Ors. (Supra).

In view of the settled legal position of law both the impugned orders contained in annexures-3 and 4 dated 18.3.1987 and 27.12.1988 respectively are fit to be set aside and they are quashed accordingly.

This writ application is allowed.

(Ajay Kumar Tripathi, J.)

Patna High Court, Patna
Dated the 24th November, 2008
NAFR (RPS)

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